

MASTER REPURCHASE AGREEMENT

entered into on _____ between _____

THE CORPORATION FOR PUBLIC DEPOSITS ("the CPD")

and _____

("the Counterparty")

WHEREAS

- (A) The parties contemplate that, in line with the CPD's official investment guidelines, the CPD and the Counterparty will from time to time enter into transactions under which the Counterparty will agree to sell and the CPD will agree to purchase certain quantities of securities and the Counterparty will agree to purchase and the CPD will agree to sell a like quantity of such securities at a later date;
- (B) the parties also contemplate that these transactions will only facilitate investments on behalf of the CPD and will not serve as an instrument used for purposes of liquidity management by the South African Reserve Bank;
- (C) the parties propose that these transactions be entered into telephonically and confirmed by facsimile communication,

IT IS AGREED AS FOLLOWS:

1. Definitions

1.1 In this Agreement the following words and expressions shall have the following meanings:

Addendum means the procedural and operational manual published by the CPD for conducting repurchase transactions between the CPD and its counterparties and which is attached to and forms part of this Agreement as an Annexure;

Business Day means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in South Africa;

Central Depository means Strate Limited, Registration No. 1998/02224/06, licensed as a central securities depository in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);

Confirmation has the meaning given in clause 2.2;

Default Notice means a written notice served by the CPD on the Counterparty in terms of clause 6.1 stating that event shall be treated as an Event of Default for the purposes of this Agreement;

Designated Telephone Link means the telephone line or number designated by the CPD with the agreement of the Counterparty as the line or number through which communications with respect to these transactions and other matters arising under or in respect of this Agreement may be given to the CPD;

Eligible Securities means securities specified in the Addendum, or otherwise specified by the CPD, as being eligible for purchase by the CPD and for delivery as Margin Securities pursuant to this Agreement;

Equivalent Securities means securities equivalent to the Purchased Securities under a Transaction;

Financial Instrument Register means a register maintained at and managed by the South African Reserve Bank to record securities held in respect of the SAMOS system for purposes of collateral, repurchase agreements and dematerialised and immobilised money market instruments;

Margin means Margin Securities;

Margin Deficit means the value of the underlying assets, following their revaluation, is less than the amount owed by the counterparty;

Margin Excess means the value of the underlying assets, following their revaluation, exceeds the amount owed by the counterparty;

Margin Securities means Eligible Securities delivered by one Party to the other by way of margin under clause 3;

Margin Transfer means transfer of Margin Securities or Equivalent Margin Securities;

Market Value means, in relation to Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities, the market value of such securities determined in accordance with the Addendum;

Party means a party to this Agreement;

Purchase Date means the Business Day on which the Counterparty agrees to sell and the CPD agrees to purchase any Purchased Securities;

Purchase Price means, with respect to this transaction the amount agreed to be paid by the CPD as consideration for the purchase of the Purchased Securities;

Purchased Securities means the Eligible Securities purchased by the CPD pursuant to a Transaction;

Qualifying Petition has the meaning given in clause 6.2;

Repurchase Date means the Business Day on which the CPD agrees to sell and the Counterparty agrees to purchase Equivalent Securities;

Repurchase Price means, with respect to any Transaction the price determined by the CPD;

SAMOS system means the South African Multiple Option Settlement system used to settle interbank funds transfers, and operated by the South African Reserve Bank;

Settlement Division means the Settlement Division of the South African Reserve Bank in Johannesburg;

Subsidiary has the meaning given in section 1 of the Companies Act, 1973;

Termination means, with respect to any Transaction, the sale by the CPD to the Counterparty of Equivalent Securities for the Repurchase Price;

Transaction means any transaction entered into pursuant to this Agreement under which the Counterparty agrees to sell and the CPD agrees to purchase a certain quantity of Eligible Securities and the Counterparty agrees to purchase and the CPD agrees to sell a like quantity of Equivalent Securities at a later date.

- 1.2 For the purposes of this Agreement securities are “**equivalent to**” other securities if –
- (a) in the case of Treasury bills, they are of an identical amount and maturity and executed by the same parties in the same capacities as those other securities;
 - (b) in the case of securities of any other description, they are (i) issued by the same issuer, (ii) part of the same issue and (iii) of an identical type, nominal value, description and (except where otherwise stated) amount, and have the same number of days to maturity as those other securities.
- 1.3 References in this Agreement to numbered clauses or schedules are to clauses of or schedules to this Agreement.

2. **Sale and purchase**

- 2.1 Unless otherwise agreed in writing between the CPD and the Counterparty, the terms and conditions set out in this Agreement shall apply to each Transaction which may be entered into between the CPD and the Counterparty.
- 2.2 The CPD shall give to the Counterparty a confirmation of the terms of each Transaction (**Confirmation**) in the form and manner and within the period prescribed by the Addendum, but no Transaction shall be invalidated by any failure to deliver or send such a confirmation, and the Counterparty shall inform the CPD of final details of securities to be delivered in the form and manner and within the period prescribed by the Addendum.
- 2.3 The CPD shall purchase the Purchased Securities from the Counterparty on the Purchase Date for the Purchase Price.

- 2.4 The Counterparty shall purchase Equivalent Securities from the CPD on the Repurchase Date for the Repurchase Price.
 - 2.5 Unless otherwise provided for in the Addendum the Counterparty shall on the Purchase Date, not later than the time specified for such delivery in the Addendum, deliver to the CPD the Purchased Securities. Provided that the CPD is satisfied that it has received the Purchased Securities on the Purchase Date not later than the time specified for such delivery in the Addendum, the CPD shall pay the Purchase Price to the Counterparty on the Purchase Date in same day funds.
 - 2.6 Unless otherwise provided for in the Addendum the Counterparty shall on the Repurchase Date, not later than the time specified for such payment in the Addendum, pay the Repurchase Price to the CPD in same day funds. Provided that the CPD is satisfied that it has received the Repurchase Price on the Repurchase Date not later than the time specified for such payment in the Addendum, the CPD shall deliver to the Counterparty Equivalent Securities on the Repurchase Date.
3. **Margin : Margin maintenance**
- 3.1 Subject to clause 3.3, if at any time there is a Margin Deficit, the CPD may by notice to the Counterparty require the Counterparty to make a Margin Transfer sufficient to eliminate the Margin Deficit, in the form and manner and within the period prescribed by the Addendum.
 - 3.2 Subject to clause 3.3, if at any time there is a Margin Excess, the Counterparty may by notice to the CPD require the CPD to make a Margin Transfer of an amount sufficient to eliminate the Margin Excess, in the form and manner and within the period prescribed by the Addendum.

- 3.3 The Addendum may provide that no notice may be given under clause 3.1 or clause 3.2, notwithstanding that there is a Margin Deficit or (as the case may be) a Margin Excess, if specified circumstances prevail or unless specified conditions are satisfied; and different provisions may be so made in respect of a Margin Deficit and a Margin Excess.
- 3.4 For the purposes of this Agreement the existence and amount of any Margin Deficit or Margin Excess at any time shall be determined in accordance with the applicable provisions contained in the Addendum.
- 3.5 Notice of any Margin Transfer under this clause shall be given, and any such Margin Transfer shall be made, at the time and in the manner provided by, and generally in accordance with, the Addendum.

4. **Payments and deliveries**

- 4.1 All payments and deliveries of securities under any Transaction shall be made in the manner specified in the Addendum or in such other manner as may be agreed between the Parties.
- 4.2 Any rights, titles and interest in any Purchased Securities, and any Margin Securities transferred under this Agreement shall pass from one Party to the other on delivery in accordance with the terms of this Agreement free from all liens, claims and encumbrances. The Parties shall execute and deliver all documents, give all instructions and do all things necessary to ensure that title passes in accordance with this clause.
- 4.3 Notwithstanding the use of expressions such as Repurchase Date, Repurchase Price, and Margin, which are used to reflect terminology used in the market in connection with transactions of the kind provided for in this Agreement, all right, title and interest in and to securities and moneys transferred or paid under this

Agreement shall pass to the transferee upon final settlement in the SAMOS system.

- 4.4 Time shall be of the essence of this Agreement.
- 4.5 Subject to clause 4.7 and clause 7, all amounts payable by each Party to the other under any Transaction or otherwise under this Agreement on the same date shall be combined in a single calculation of a net sum payable by one Party to the other and the obligation to pay the sum shall be the only obligation of either Party in respect of those amounts.
- 4.6 Subject to clause 4.7 and clause 7, all securities of the same issue, denomination, currency and series transferable by each Party to the other under any Transaction or otherwise under this Agreement on the same date shall be combined in a single calculation of a net quantity of securities transferable by one Party to the other and the obligation to transfer the net quantity of securities transferable by one Party to the other and the obligation to transfer the net quantity of securities shall be the only obligation of either Party in respect of the securities so transferable and receivable.
- 4.7 Nothing in clause 4.5 or clause 4.6 shall preclude the settlement of payments on a gross basis through the SAMOS system, or the delivery of securities through the Settlement Division or any other securities settlement system, as the case may be, in accordance with the Addendum.

5. **Representations, warranties and undertakings**

- 5.1 The Counterparty represents, warrants and undertakes to the CPD that -
 - (a) it is duly authorised to enter into and perform in terms of this Agreement and the Transactions contemplated hereby;

- (b) it is entering into the Agreement, and will enter into and perform the Transactions by this Agreement, as principal;
 - (c) the person signing this Agreement and entering into any Transaction on its behalf is or, in the case of any Transaction, will at the time such Transaction is entered into be duly authorised so to act;
 - (d) it has obtained all authorisations of any governmental authority or regulatory body required by it in connection with this Agreement and the Transactions to be effected under it and such authorisations remain in full force and effect;
 - (e) the execution, delivery and performance of this Agreement and the Transactions to be effected under it will not violate any law, regulation, by-law or rule applicable to the Counterparty;
 - (f) at the time of sale to the CPD of any Purchased Securities or payment or transfer to the CPD of any Margin it will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the CPD will receive the same free and clear of any lien, claim, charge or encumbrance; and
 - (g) at the time of any purchase by the Counterparty of any Equivalent Securities it will have the full and unqualified right to make such purchase.
- 5.2 The CPD represents and warrants to the Counterparty that at the time of sale to the Counterparty of any Equivalent Securities or transfer to the Counterparty of any Margin Securities it will have the full and unqualified right to make such sale, payment or transfer, and that upon sale, payment or transfer the Counterparty will receive the same free and clear of any lien, claim, charge or encumbrance, except as expressly contemplated otherwise in this Agreement or the relevant Transaction.

5.3 The Counterparty and the CPD shall be deemed to repeat the representations and warranties set out in clauses 5.1 and 5.2 respectively on each occasion on which a Transaction is entered into.

6. Default

6.1 For the purposes of this Agreement, and subject to clause 6.2., *Event of Default* shall be treated as occurring if -

- (a) the Counterparty fails in respect of any Transaction to deliver the Purchased Securities on the Purchase Date and by the time specified for such delivery in the Addendum or to pay the Repurchase Price on the Repurchase Date and by the time specified for such payment in the Addendum; or
- (b) the Counterparty fails to comply with clause 3.1; or
- (c) any representation made or deemed to be made or repeated by the Counterparty was or is incorrect or untrue in any material respect when made or repeated or deemed to be made or repeated; or
- (d) the Counterparty fails to perform any other of its obligations under this Agreement, including the Addendum, and does not remedy such failure within three full Business Days after notice given by the CPD requiring it to do so; or
- (e) the Counterparty informs or admits to the CPD that it is unable to, or intends not to, perform any of its obligations under this Agreement or in respect of any Transaction; or

- (f) the Counterparty is suspended or expelled from membership of or participation in any securities exchange or association or other self-regulating organisation, or suspended from dealing in securities by any regulatory authority, or any of its assets or the assets of investors held by it or to its order are transferred or ordered to be transferred to a trustee or curator by a regulatory authority or competent court of law pursuant to any banking or securities regulating legislation; or
- (g) the Counterparty makes a general assignment for the benefit of, or enters into a reorganisation, arrangement or composition with creditors; or
- (h) the Counterparty is unable to pay its debts as they become due, or the Counterparty's liabilities exceed its assets; or
- (i) the Counterparty seeks, consents to or acquiesces in the appointment of any trustee, curator, judicial manager or liquidator or analogous officer of it or any material part of its property; or
- (j) a Qualifying Petition (as defined in clause 6.2) is filed or presented in respect of the Counterparty or any of its Subsidiaries; or
- (k) application is made for the placing under judicial management or curatorship of the Counterparty or any of its Subsidiaries; or
- (l) an order is made or resolution passed for the winding-up or dissolution of the Counterparty, or the Counterparty is placed under judicial management or curatorship; or
- (m) an order is made or a resolution is passed for the winding-up (not being a members' voluntary winding-up) of any Subsidiary of the Counterparty or any such Subsidiary is placed under judicial management or curatorship; or

- (n) an application (not being an application falling within the ambit of paragraph (j) or (k) above) is filed or presented in respect of the Counterparty or any of its Subsidiaries (other than by the CPD in respect of any obligation under this Agreement) in any court or before any agency or for the insolvency, winding-up or insolvency of the Counterparty or any of its Subsidiaries (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief (other than a solvent reconstruction, amalgamation or reorganisation to which the CPD has given its prior written consent) under any present or future law or regulation, such petition not having been stayed or dismissed within 30 days of its filing; or
- (o) there is appointed a curator, judicial manager, liquidator or trustee or analogous officer of the Counterparty or over all or any material part of the Counterparty's property; or
- (p) there is convened any meeting of creditors of the Counterparty for the purposes of considering a voluntary arrangement or any analogous proceeding; or
- (q) any event analogous to any of those mentioned in paragraphs (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) above occurs in any jurisdiction in relation to the Counterparty or, where any such paragraph includes reference to an occurrence relating to any of the Counterparty's Subsidiaries, any of its Subsidiaries; or
- (r) (i) the Counterparty's membership of, or participation in, the Settlement Division, the SAMOS System, the Central Depository or any other securities settlement system through which the Counterparty holds or delivers securities for the purposes of this Agreement is suspended or terminated, or (ii) where the Counterparty holds or delivers securities for

the purposes of this Agreement through the Central Depository, the Settlement Division or any such other securities settlement system under arrangements made with a member of that system, those arrangements are terminated or suspended, unless the Counterparty continues to be able to hold and transfer securities through the relevant securities settlement system under arrangements made with another member, or by itself becoming a member, of the relevant securities system;

and in the case of any event other than that mentioned in paragraph (r) above so far as it relates to that paragraph, the CPD serves a Default Notice on the Counterparty.

6.2 For the purposes of this clause 6 a **Qualifying Petition** means an application for the winding-up order (or seeking similar relief in any jurisdiction) based on the non-payment of a debt or other claim of an amount exceeding R10 000 000 (ten million rand) or the equivalent of that sum in any other currency (or such other amount as may be specified in the Addendum).

6.3 The Counterparty shall immediately notify the CPD if an Event of Default, or an event which, upon the serving of a Default Notice, would be an Event of Default, occurs.

7. Close-out and liquidation of obligations on the occurrence of an Event of Default

7.1 If an Event of Default occurs in relation to the Counterparty -

(a) the Repurchase Date for each Transaction shall be deemed to occur immediately and, subject to the following provisions of this clause, all Equivalent Margin Securities shall be immediately deliverable (and so that, where this clause applies, performance of the respective obligations of the Parties with respect to the delivery of securities, the payment of the

Repurchase Price for any Equivalent Securities, shall be effected only in accordance with the following provisions of this clause);

- (b) the Default Market Values of the Equivalent Securities and any Equivalent Margin Securities to be transferred, Repurchase Prices to be paid by the Counterparty shall be established by the CPD, acting reasonably and in good faith, for all Transactions as at the Repurchase Date;
- (c) on the basis of the sums so established, an account shall be taken (as at the Repurchase Date) of what is due from each Party to the other under this Agreement (on the basis that each party 's claim against the other in respect of the transfer to it of Equivalent Securities or Equivalent Margin Securities under this Agreement equals the Default Market Value therefor) and the sums due from one Party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be due and payable on the same Business Day as the occurrence of the Event of Default.

7.2 The Counterparty shall be liable to the CPD for the amount of all reasonable legal and other expenses incurred by the CPD in connection with or as a consequence of an Event of Default, together with interest thereon at the rate specified in clause 8.

8. Default interest

8.1 If a Party fails to pay the balance referred to in clause 7.1(c) in accordance with that clause that Party shall pay interest on the amount of such balance from the time of default up to the time of actual payment (as well after as before judgement) at the prevailing main repo rate as determined by the South African Reserve Bank from time to time.

8.2 Interest under this clause 8 shall accrue daily on the basis of a year of 365 days from and including the first day to the last day of each period of one month beginning from the day on which the balance under clause 7.1(c) was due and shall be due and payable at the end of each such period. So long as the default continues, the rate referred to in clause 8.1 shall be calculated on a similar basis at the end of each such period and interest payable under this clause 8.2 which is unpaid at the end of each such period shall thereafter itself bear interest at the rates provided in this clause 8.

9. **No waivers**

No indulgence or concession granted by either Party (including, without limitation, the entering into or performance of any Transaction, or any other business at any time when an Event of Default has occurred and is continuing) and no omission or delay on the part of either Party in exercising any right, power or privilege hereunder or under any Transaction shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege hereunder or under any Transaction operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of each Party provided in this Agreement and any Transaction are cumulative with and not exclusive of any rights of lien, sale, set-off or retention or other rights or remedies which such Party may have at common law, by statute or otherwise howsoever.

10. **Single agreement**

The Parties acknowledge that, and have entered into this Agreement and will enter into each Transaction in consideration of and in reliance on the fact that, all Transactions constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each of the Parties agrees that -

- (a) subject and without prejudice to clause 7, each of them shall in case of an Event of Default be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction; and
- (b) payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

11. **Successors in title and permitted assigns**

- 11.1 The provisions of this Agreement and of each Transaction shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns.
- 11.2 The rights and obligations of the Parties under this Agreement and under each Transaction shall not be capable of assignment by either Party without the prior written consent of the other.

12. **Telephone and facsimile communications**

- 12.1 The CPD shall be entitled without further enquiry to accept and act on any request, instruction or other communication or purported request, instruction or other communication received by the CPD through the Designated Telephone Link notwithstanding that it may afterwards be discovered that that request, instruction or other communication was not genuine or was not authorised by the Counterparty. Any such request, instruction or other communication on which the CPD so acts shall for all purposes of this Agreement and the Addendum be treated as effective and binding on the Counterparty in accordance with its terms and, accordingly, neither the CPD nor any of its servants or agents shall incur any

liability or be responsible for any loss, damage, expense or claim whatsoever by reason of so acting.

12.2 The Counterparty shall procure that all requests, instructions and other communications given through the Designated Telephone Link are made or given by persons who are duly authorised to make or give them on its behalf and are within the scope of the authority of the person making or giving them.

12.3 The Counterparty undertakes -

- (a) to provide the CPD with a list of all persons who are authorised to sign facsimile transactions relating to Transactions or otherwise relating to the matters to which this Agreement relates and with such particulars with respect to such persons as may from time to time be specified in the Addendum;
- (b) promptly to provide the CPD with particulars of any change in the persons and particulars referred to in paragraph (a) above;
- (c) to comply with any procedures set out in the Addendum or otherwise agreed between the Counterparty and the CPD with respect to the identification, confirmation or authentication of requests, instructions or other communications given by facsimile transmission on behalf of the Counterparty or with the maintenance of security with respect to or in connection with such requests, instructions or other communications.

12.4 The Counterparty agrees and acknowledges that, subject to any express provision of the Addendum -

- (a) the CPD will be entitled to act on the basis of any facsimile request, instruction or other communication appearing to the CPD to have been

given by any person for the time being appearing on the list referred to in clause 12.3(a);

(b) the CPD and its servants and agents will not be responsible for any loss, claim or expense arising directly or indirectly out of the fraudulent impersonation of any person for the time being appearing on the list referred to in clause 12.3(a);

(c) the CPD and its servants and agents will not be responsible for any other loss, claim or expense arising out of any error or excess or want of authority in or with respect to any request, instruction or other communication given or purporting to have been given by facsimile under this Agreement except to the extent that such loss, claim or expense is shown to be attributable to negligence on the part of the CPD or its servants or agents.

12.5 Each Party must electronically record all telephone conversations between them.

13. **Notice**

13.1 Subject to clause 13.2, any notice required to be given under this Agreement shall be deemed to be duly served if left at or sent by registered or recorded delivery post or (save in the case of a Default Notice) by facsimile transmission, in the case of a notice to the CPD at the South African Reserve Bank, 370 Church Street, Pretoria, 0002, fax number **(012) 313-3691**, marked for the attention of Mr Callie Hugo, or to such other address or fax number as the CPD may notify to the Counterparty in writing, and in the case of notice to the Counterparty at , fax number , marked for the attention of or to such other address or fax number as the Counterparty may notify to the CPD in writing. Any such notice shall be deemed to be served:

- (a) if left at the address of the Party to be served, at the time when it is so left (or, if it is left on a day that is not a Business Day, at 8.15 a.m. on the next following Business Day);
- (b) if sent by post, on the third Business Day following the day of posting;
- (c) if sent by telex, when it is sent if it is sent between 8.15 a.m. and 5 p.m. on a Business Day and otherwise at 8.15 a.m. on the next Business Day following the time when it is sent; and
- (d) if sent by facsimile transmission, when confirmation of receipt is received.

In providing the giving of a notice under this clause 13.1 it shall be sufficient to prove that the notice was delivered at the address for service or that the envelope containing such notice was properly addressed and posted (as the case may be).

- 13.2 The Addendum may provide for any notice other than a Default Notice to be given verbally, including by telephone; any such notice shall be deemed to be served when it is actually given.

14. **Costs and expenses**

- 14.1 Each party agrees to pay and bear its own costs and expenses incurred in connection with the preparation and execution of this Agreement and the entering into of each Transaction.
- 14.2 Each Party agrees to pay or reimburse to the other Party all the other Party's costs and expenses (including legal expenses) together with any value added tax thereon, reasonably incurred in connection with the enforcement of any of the other Party's rights under this Agreement of any Transaction.
- 14.3 The Counterparty agrees to reimburse the CPD on demand for all fees, costs, charges and other expenses reasonably incurred by the CPD in connection with

the holding of any securities in any securities settlement system for the purposes of or in connection with this Agreement or any Transaction.

14.4 Any amounts payable under this clause shall be notified to the Counterparty and paid in accordance with the Addendum.

15. **Amendments**

This Agreement may not be amended except by an instrument in writing signed by each of the Parties.

16. **Headings**

The headings of the clauses of this Agreement are for convenience of reference only and shall be ignored in construing this Agreement and any Transaction.

17. **Termination**

This Agreement may at any time be terminated by either Party by giving to the other not less than 7 (seven) days notice in writing (such termination becoming effective upon expiry of such notice), which notice shall not affect any Transaction which is then outstanding and the provisions of this Agreement shall continue to apply to each such Transaction until all the obligations of each Party to the other under this Agreement and each such Transaction have been fully performed.

18. **Governing law and jurisdiction**

This Agreement and each Transaction shall be governed by and construed in accordance with South African law.

THUS DONE AND SIGNED by the duly authorised representatives of the Parties.

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DEPUTY GOVERNOR
on behalf of the CPD

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DATE

.....

on behalf of the Counterparty

.....

DATE